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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/796,869

03/08/2004

Marilyn Geninatti

PHLV0768-001

2671

7590

05/12/2005

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EXAMINER

SZUMNY, JONATHON A

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/796,869	GENINATTI, MARILYN	
	Examiner	Art Unit	
	Jon A Szumny	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 14-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-19 and 21 is/are allowed.
- 6) ☒ Claim(s) 1, 4-7 and 20 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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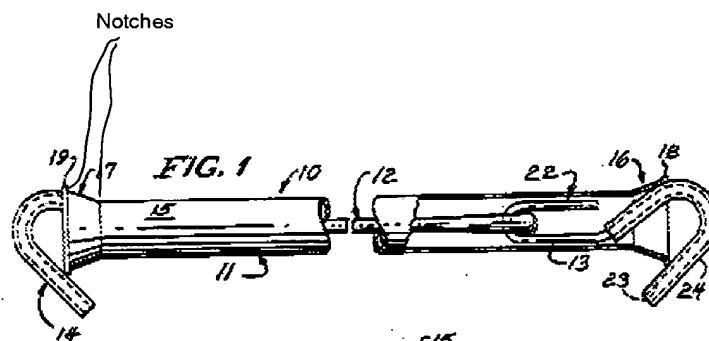
This is the second office action for application number 10/796,869, Rock Climbing Machinery, filed on March 10, 2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 4,817,551 to Matson in view of U.S. Patent number 6,510,599 to AmRhein.



Matson '551 discloses a device (figure 1) comprising a tube (15) made of PVC plastic (column 2, lines 43-44), first and second hooking devices (13,14, left and right sides), and a band with first and second ends (12, left and right ends in figure 1), wherein the tube further comprises a shaft, a top and a bottom (left and right sides, respectively), wherein the top comprises a first pair of notches (above) arranged at opposite ends from each other (the left and

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right opposite ends of the top), wherein the band passes through the shaft such that the first end of the band is located near the top/left end of the tube and the second end of the band is located near the bottom/right end of the tube, wherein the first hooking device and second hooking devices are respectively fastened to the first and second ends of the band. However, Matson '551 fails to specifically teach the first and second hooking devices to be first and second carabiners, but does teach that the first and second hooking devices could be "snap hooks" (see column 3, lines 53-54).

AmRhein '599 reveals a well-known snap hook comprising an aluminum carabiner with a spring-loaded lever (column 1, lines 33-38, it is a snap hook because the spring in the lever causes the lever to snap back to its original position after being pivoted). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced the first and second hooking devices of Matson '551 with first and second aluminum carabiners so as to provide for a more secure hooking of a mounting surface by preventing unwarranted disengagement from the mounting surface.

Further, Matson '551 in view of AmRhein '599 teach the previous invention failing to specifically reveal the first and second ends of the band to emerge from the top and bottom of the tube. However, Matson '551 does teach that the preload on the band 12 is "not so great as to make it difficult to withdraw the hook" from the tube (column 3, lines 25-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have stretched the band such that the first and second ends respectively emerge from the top and bottom of the tube so as to facilitate mounting of the carabiners onto the band. Further, an ordinary artisan would recognize that such would naturally be possible since the type of band

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being used is a "tarp strap" (column 2, line 47) in addition to the fact that it should not be difficult to withdraw the hooks/carabiners from the tube.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 4,817,551 to Matson in view of AmRhein '599, and further in view of U.S. Patent number 6,776,317 to Parker.

Matson '551 in view of AmRhein '599 teach the previous invention failing to specifically divulge the band to be made of nylon. However, Parker '317 teaches that it is well known that nylon bands are used in the carabiner art (column 3, line 67 through column 4, line 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the band of nylon since it is well known in the art as is taught by Parker '317 that nylon is a common and useful material for constructing elastic bands.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 4,817,551 to Matson in view of AmRhein '599, and further in view of U.S. Patent number 6,678,993 to Long.

Matson '551 in view of AmRhein '599 teach the previous invention failing to specifically teach the band to be made of spectra. Nevertheless, Long '993 teaches an assembly comprising a band (20) with hooks on both ends thereof wherein the band is comprised of spectra (column 2, lines 30-34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the band of Matson '551 in view of AmRhein '599 to be as that in Long '993 so as to provide for a more durable and long lasting band/cord as is well known in the band/cord and hook combination art.

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Allowable Subject Matter

Claims 14-19⁺²¹ are allowed. *21*

Claims 2 and 3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for allowance for claims 2, 3 and 14 can be found in a previous office action.

Response to Arguments

Applicant's arguments filed April 11, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, regarding the bottom of page 10 of the remarks, the applicant contends there is no motivation to combine the teaching of AmRhein '599 with that of Matson '551. The Examiner certainly disagrees. As already mentioned, Matson '551 teaches that snap-hooks are suitable for use instead of the hooks 13,14. AmRhein '599 teaches such snap-hooks which are made of aluminum. Thus, it is by absolutely no stretch of the imagination and would even be desirable to utilize the snap hook/carabiner of AmRhein '599 with the invention of Matson '551 since it is

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well known that aluminum provides for lightweight and sturdy snap hooks/carabiners in addition to the fact that AmRhein '599 provides a common example of a snap hook/carabiner that is already proven to be suitable with use of the invention of Matson '551 (see column 3, lines 53-54 of Matson '551).

Further, the applicant contends that the Examiner used hindsight in modifying the band of Matson '551 in view of AmRhein '599 to emerge from the top and bottom of the tube. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). More specifically, "emerge" is defined in Merriam Webster's Collegiate Dictionary - 10th Edition as "to become manifest" or "to rise" or "to come out into view". Clearly, as is implied later on in the applicant's response, it is not required that the band extends past the top and bottom of the tube, only that it "rises," "becomes manifest," or "comes out into view." Clearly, an ordinary artisan would realize that extending the ends of the band somewhat so as to be closer to the ends of the tube would allow the band to, for instance, "come out into view" and thus would allow the snap hooks more easily attach to some mounting surface. Finally, as previously described, doing so would not destroy the reference since the preload on the band should "not be so great as to make it difficult to withdraw the hook" (see column 3, lines 25-27 of Matson '551).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the carabiners locking into place in the notches, the length of the band being slightly longer than the tube) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On the bottom of page 14 of the response, the applicant contends that the function of the device of Matson '551 would be destroyed when combined with the device of AmRhein '599, because the hooks would not be able to be turned 90 degrees relative to one another. Again, the Examiner disagrees. The Examiner is gleaned only the construction of the snap hook/carabiner of AmRhein '599, and the Examiner sees no reason would the hooks would not be able to be turned 90 degrees relative to one another.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). More specifically, the Examiner was not gleaned the outer sheath 48 of Parker '317, only the nylon band/cord 50, and modifying the band of Matson '551 in view of AmRhein '599 to be nylon would have been obvious since bands as used in the carabiner/snap hook art are commonly constructed of nylon.

In response to applicant's argument that the prior art reference are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was

concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Octiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, since the reference all refer to hooks and bands, clearly they are analogous art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (571) 272-6824. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized flourish extending to the right.

Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
May 10, 2005